BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved on 07.07.2017
Pronounced on 26.07.2017
CORAM :
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
C.M.A.(MD)No.907 of 2011
and
Cross Objection (MD) No.29 of 2012
and
M.P.(MD) No.1 of 2012

C.M.A.(MD) No.907 of 2011
1.Mary Immanuvel
2.Carolin Sangeetha ... Appellants/Claimants

Vs.

1.Periyasamy
2.Thangasamy
3.The Branch Manager,
United India Insurance Company Ltd.,
S.S.High Road, Tirunelveli.

4.Ramdass
5.Baskaran
6.The Branch Manager,
United India Insurance Co. Ltd.,
Valliyur. ... Respondents/Respondents

Cross Obj.(MD) No.29 of 2012

The Branch Manager,
United India Insurance Company Ltd.,
S.S.High Road, Tirunelveli. ... Cross Appellant/Respondent

VS.

1.Mary Immanuel
2.Carolin Sangeetha
3.Periyasamy ...Respondents/Claimants
4.Thangasamy
5.Ramdass
6.Baskaran
7.The Branch Manager,
United India Insurance Co. Ltd.,
Valliyur. ... Respondents/Respondents
(Respondents 3 to 6 remained exparte
hence notice to respondents 3 to 6
are dispensed with)

Prayer in C.M.A(MD) No.907 of 2011: Appeal Petition filed under section 173 of the Motor Accidents Claims Tribunal, to modify the order and decree made in M.C.O.P.No.485 of 2008 dated 29.06.2010 on the file of the Motor Accident Claim Tribunal cum Principal Sub Court, Thenkasi and award compensation as Rs.1 crore.

Prayer in Cross Obj.,(MD) No.29 of 2012: Cross objection filed under Order 41 Rule 22 read with Section 173 of the Motor Vehicle Act,1988, against the Order and decree dated 29.06.2010 passed in M.A.C.O.P.No.485 of 2008 on the file of the Motor Accidents Claims Tribunal (Principal Sub Court), Tenkasi.

For Appellants in CMA & RR1 and 2 in Cross Obj. : Mr.R.Murali for Mr.C.Ramesh

For 3rd Respondent in CMA & Appellant in Cross Obj. : Mr.G.Prabu Rajadurai

JUDGMENT

(Judgment of the Court was delivered by **G.R.SWAMINATHAN, J.)**

The claimants in M.C.O.P.No.485 of 2008 on the file of the Motor Accidents Claims Tribunal cum Principal Sub Judge, Tenkasi have filed C.M.A.No.907 of 2011 seeking enhancement. The United India Insurance Limited has filed cross objection in Cross Obj.No.29 of 2012.

2.The first claimant is the wife and the second claimant is the daughter of the deceased Dr.Immanuvel. When he was riding a motor cycle on 03 December 2008, the auto bearing registration No.TN 72-B-4650, which was going in front suddenly stopped at Melameignanapuram bus stop. The motor cyclist made an attempt to turn the vehicle to the right side and dashed from behind. He fell down and one Tata Sumo bearing registration No.TN 72-QA-1455 coming from the opposite direction directly hit him leading to his death. Both the auto as well as the Tata Sumo were insured with United India Insurance Company. The deceased was working as Senior Civil Surgeon in Tirunelveli Corporation. He was a pediatric surgeon and he was aged about 58 years at the time of death. According to the claimants, his Government salary was Rs.34,967/- and that he earned Rs.60,000/- per month from private practice. He was also stated to be an agriculturist and earned agricultural income. The claimants made a claim of Rs.1 crore towards compensation with cost.

3.The Insurance Company filed their counter. The income earned by the deceased as well as fastening of negligence on the auto and Tata sumo were contested.

4.The Tribunal noted that if the deceased rider had maintained a safe distance, he would not have dashed against the auto leading to his fall. Therefore, contributory negligence of 50% was fixed on the deceased. Since the auto as well as Tata sumo were insured with United India Insurance Company, the said Insurance company was held as liable to pay the compensation to the claimants. As regards the income earned by the deceased, the Tribunal noted that he was earning a sum of Rs.35,967/- per month. Since he was also in private practice, the monthly income was fixed at Rs.50,000/-. After deducting 1/3 income towards personal expenses, the monthly income was arrived at Rs.33,334/-. The deceased was aged 58 years. Therefore, multiplier of 8 was applied. After awarding sums under the heads such as loss of consortium etc., and after deducting towards the contributory negligence of 50%, a sum of Rs.12,20,024/- was directed to be paid as compensation to the claimants at 7.5% interest per annum with costs. The apportionment was also duly made between the mother and daughter. Aggrieved by the same, the claimants are on appeal. As already pointed out, the Insurance Company had also filed cross objection.

5.Heard the learned counsel for the claimants as well as the Insurance company. We have carefully gone through the records.

6.The learned counsel for the Insurance Company referred to the statutory provisions regarding keeping safe distance while driving on the road. We sustain the findings regarding contributory negligence made by the Tribunal. The auto admittedly stopped only at the bus stop. Any road user ought to note that the auto would definitely stop near the bus stop to pickup the passengers waiting there. Since the deceased rider of the motor vehicle had followed the auto closely from behind, he could not avoid the accident. Therefore, the Tribunal rightly fixed the contributory negligence at 50% on the deceased.

7.As regards the monthly income, it is relevant to note here that the income tax returns of the deceased did not reflect the income said to have been earned by him from his private practice. What was shown in the income tax returns was only a sum of Rs.34,967/- per month earned by him as a Government Doctor. But, we can certainly come to the conclusion that the deceased would have definitely had private practice and therefore, the Tribunal was right in arriving at his monthly income at Rs.50,000/-. Since the age of the deceased was 57 years, the multiplier would be 9. The deduction of 1/3 income towards personal income will have to be made. Rs.1,00,000/- shall be payable for consortium to the wife and Rs.50,000/- shall be payable to the daughter for love and affection and also a sum of Rs.25,000/- shall be payable for funeral expenses.

8.In the light of the foregoing discussion, the compensation payable to the claimants works out as under:

			In Rs.
Loss of income	:	Rs.33,334 x 12 x 9	36,000,72
Loss of consortium			1,00,000
Love and affection			50,000
Funeral expenses			25,000
		Total	37,75,072
Deduction 50% for contributory negligence			18,875,36
Eligible compensation to claimants			Rs.18,87,536

9.In the result,

1. the Civil Miscellaneous Appeal (MD) No.907 of 2011 is partly allowed and Cross.Obj. 29 of 2012 is dismissed and the order dated 29.06.2010 passed in MCOP.No.485 of 2008 on the file of the Motor Accidents Claims Tribunal, Principal Sub Judge, Tenkasi is modified as shown above. No costs. Consequently, connected miscellaneous petition is closed.

(ii) The United India Insurance Company appellant is directed to pay the compensation amount, as modified by this Court along with proportionate interest and costs from the date of petition till the date of realisation, less the amount already deposited, if any, to the credit of MCOP.No.485 of 2008 on the file of the Motor Accidents Claims Tribunal, Principal Sub Judge, Tenkasi, within a period of six weeks from the date of receipt of a copy of this judgment.

(iii)The compensation amount has to be apportioned in the same ratio as directed by the Tribunal.

(iv)The claimants are permitted to withdraw their share amount that would be deposited by the Insurance Company, less the amount already withdrawn, if any, with proportionate interest and costs, through RTGS by filing necessary Application before the Tribunal.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To
The Principal Sub Judge,
Motor Accidents Claims Tribunal, Tenkasi.
+1cc to M/S.R.MURALI, Advocate SR.No.68495
+2ccs to M/S.G.PRABHU RAJADURAI, Advocate SR.No.68201&34617
Arul
MAS/SKN-RSK/SAR2:29.08.2017:4P-5C

order made in
C.M.A.(MD)No.907 of 2011
and
Cross Objection (MD) No.29 of 2012
and
M.P.(MD) No.1 of 2012
26.07.2017